

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Steven A. Simontacchi [SBN 138948] Phillips, Downs & Simontacchi, LLP 55 Shaver Street, Suite 330 San Rafael, CA 94901 TELEPHONE NO.: 415 453 9999 FAX NO.: 415 453 6999 ATTORNEY FOR (Name): Plaintiff CV Anthony II, LLC	FOR COURT USE ONLY <div style="font-size: 2em; opacity: 0.5;">FILED</div>
NAME OF COURT: Marin County Superior Court STREET ADDRESS: 3501 Civic Center Drive MAILING ADDRESS: P.O. Box 4988 CITY AND ZIP CODE: San Rafael, CA 94903 BRANCH NAME: Unlimited Jurisdiction	<div style="font-size: 1.5em; opacity: 0.5;">FILED</div>
PLAINTIFF: CV Anthony II, LLC, a California limited liability company DEFENDANT: Doyle Heaton	CLERK OF COURT JUDICIAL OFFICE COUNTY SUPERIOR COURT S. Bond, Deputy
EX PARTE <input checked="" type="checkbox"/> RIGHT TO ATTACH ORDER AND ORDER FOR ISSUANCE OF WRIT OF ATTACHMENT (RESIDENT) <input type="checkbox"/> ORDER FOR ISSUANCE OF ADDITIONAL WRIT OF ATTACHMENT (RESIDENT)	CASE NUMBER: CIV 095267

1. The application and supporting declaration or affidavit of plaintiff (name): **CV Anthony II, LLC (Dan Morgan declaration)** for an ex parte ☒ right to attach order and order for issuance of writ of attachment ☐ order for issuance of an additional writ of attachment has been considered by the court.

FINDINGS

2. THE COURT FINDS

- a. Defendant (specify name): **DOYLE HEATON** is a ☒ natural person
☐ partnership ☐ unincorporated association ☐ corporation ☐ other (specify):
- b. The claim upon which the application is based is one upon which an attachment may be issued under Code of Civil Procedure section 483.010.
- c. Plaintiff has established the probable validity of the claim upon which the attachment is based.
- d. The attachment is not sought for a purpose other than the recovery on the claim upon which the application is based.
- e. The amount to be secured by the attachment is greater than zero.
- f. The affidavit or declaration accompanying the application shows that the property sought to be attached, or the portions thereof to be specified in the writ, are not exempt from attachment.
- g. The portion of the property sought to be attached described in item 3b is not exempt from attachment.
- h. An undertaking in the amount of: **\$ 10,000** is required before a writ shall issue, and plaintiff ☒ has ☐ has not filed an undertaking in that amount.
- i. Great or irreparable injury will result to the plaintiff if issuance of the order is delayed until the matter can be heard on notice, based on the following:
 - (1) ☒ There is a danger that the property sought to be attached would be
 - (a) ☒ concealed. (b) ☒ substantially impaired in value.
 - (c) ☒ made unavailable to levy by other than concealment or impairment in value.
 - (2) ☒ Defendant has failed to pay the debt underlying the requested attachment and is insolvent as defined in Code of Civil Procedure section 485.010, subdivision (b)(2), as set forth in the affidavit or declaration filed in support of this application, which specifies the defendant's known undisputed debts and the basis for plaintiff's determination that the defendant's debts are undisputed.
 - (3) ☐ A bulk sales notice was recorded and published pursuant to Division 6 of the Commercial Code with respect to a bulk transfer by the defendant.
 - (4) ☐ An escrow has been opened pursuant to the provisions of Business and Professions Code section 24074 with respect to the sale by the defendant of a liquor license. The liquor license number is:
 - (5) ☐ Other circumstances (specify):
- j. ☒ A Right to Attach Order was issued on (date): **forthwith, October 20, 2009** pursuant to ☐ Code of Civil Procedure section 484.090 (on notice) ☒ Code of Civil Procedure section 485.220 (ex parte)
- k. ☐ Other (specify):

(Continued on reverse)

SHORT TITLE: CV ANTHONY II, LLC v. HEATON	CASE NUMBER: CIV 095267
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ORDER

3. THE COURT ORDERS

- a. Plaintiff has a right to attach property of defendant (name): **DOYLE HEATON**
in the amount of: \$ **902,226.22**
- b. The clerk shall issue ☒ a writ of attachment ☐ an additional writ of attachment in the amount stated in item 3a
☐ forthwith ☒ upon the filing of an undertaking in the amount of: \$ **10,000**
(1) ☐ for the property covered by a bulk sales notice with respect to a bulk transfer by defendant or the proceeds of the sale
of such property, described as follows (specify):
- (2) ☐ for plaintiff's pro rata share of proceeds from an escrow in which defendant's liquor license is sold. The license number
is (specify):
- (3) ☐ for any property of a defendant who is **not** a natural person for which a method of levy is provided.
- (4) ☒ for property of a defendant who is a natural person subject to attachment under Code of Civil Procedure section
487.010 (specify):
- (1) All real property including without limitation properties identified on Exhibit A attached
hereto
- (2) All accounts receivable as defined in CCP §481.030
- (3) All deposit accounts defined in CCP §481.080
- (4) All documents of title as defined in CCP §481.090.
- (5) All instruments as defined in CCP §481.117.
- (6) All inventory as defined in CCP §481.120.
- (7) All negotiable documents of title pursuant to CCP §487.010(c)(8)
- (8) All securities as defined in CCP §481.210
- c. ☒ Defendant shall transfer to the levying officer possession of
- (1) ☒ any documentary evidence in defendant's possession of title to any property described in item 3b.
- (2) ☒ any documentary evidence in defendant's possession of debt owed to defendant described in item 3b.
- (3) ☐ the following property in defendant's possession (specify):

**NOTICE TO DEFENDANT: FAILURE TO COMPLY WITH THIS ORDER MAY SUBJECT YOU TO
ARREST AND PUNISHMENT FOR CONTEMPT OF COURT.**

d. ☐ Other (specify):

e. Total number of boxes checked in item 3: 6

Date: **OCT 20 2009**

JOHN A. SUTRO, JR.

EXHIBIT A

- (1) 2960 Cherry Lane, Walnut Creek, CA 94597; APN:1481600169
- (2) 8110 Locust Pl S, Dublin, CA 94568; APN: 941275405500
- (3) 8172 Locust Pl S, Dublin, CA 94568; APN: 941275400300

Doyle Heaton
September 30, 2008

Real Estate Owned

Rental Property (2 units), Petaluma, CA
Rental Property (4 units), Concord, CA
Rental Property (2 units), Concord, CA
Rental Property (4 units), Dublin, CA
Rental Property (3 units), Dublin, CA
Rental Property (4 units), Dublin, CA
Rental Property (3 units), Petaluma, CA
Tahoe Property, Truckee, CA
Rental Property (2 units), Petaluma, CA
Rental Property (3 units), Petaluma, CA
Rental Property (7 units), Pleasant Hill, CA
Residence, Walnut Creek, CA
Residential Lot, Walnut Creek, CA
Mulberry Apartments, Concord, CA
Tahoe Property, Truckee, CA

		Second Loans Allocated to Units	Total Loans Outstanding
(a)	\$950,000		
(b)	1,400,000		
(c)	800,000		
(d)	1,800,000		
(e)	1,240,000		
(f)	2,000,000		
(g)	1,430,000		
(h)	550,000		
(i)	1,080,000		
(j)	1,290,000		
(k)	4,150,000		
	1,100,000		
	650,000		
	500,000		
(l)	350,000		

Total Real Estate Owned

\$19,290,000

EXHIBIT B

EXHIBIT A